IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 346 OF 2002.

Shri Subhash V. Elekar,
Goa Civil Service (Retd.),
Flat No. E/S/8,
Kamat Mansion, Miramar,
Panaji, Goa. ... Petitioner.

VERSUS

1. State of Goa,
through its Chief Secretary,
having its Office at
Secretariat, Panaji, Goa.

2. Joint Secretary (Personnel),
Government of Goa,
having his Office at
Secretariat, Panaji, Goa.

3. Director of Accounts,
Government of Goa,
Panaji, Goa. ... Respondents.

Mr. G. K. Tamba, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. N.K. Sawaikar, Addl. Government Advocate for the Respondents.

CORAM: D.G. DESHPANDE &
P.V. HARDAS, JJ.

DATE: 13TH JANUARY, 2003.

ORAL JUDGMENT: **(PER DESHPANDE, J.)**

Heard Advocates for the Petitioner and the Respondents.

2. By consent Rule heard forthwith.

3. The petitioner has already retired from service on 31st January, 2001. His pension Order was issued prior to retirement on 3.01.2001. His pension was fixed at Rs.6750/-. Thereafter ad hoc promotion was granted to him with retrospective effect by Order dated 16.02.2001, as a result of which his pension was increased from Rs.6750/- to Rs.7150/-.

4. However, the Government subsequently found that the Order dated 16.02.2001 was wrong and the said Order was withdrawn, and as a result of which the pension paid to all those persons who got benefit by the earlier Order granting ad hoc promotion, was ordered to be recovered and the retirement pension fixed, particularly in this case by Order dated 26.12.2001 was ordered to be implemented.

5. The petition is filed for the purpose of restraining the Government from implementing the Order dated 26.12.2001. Counsel for the petitioner also relied upon the judgment of the Supreme Court reported in 1995 Supp. (1) S.C. Cases, 282 **(Union of India v. Lala Jagannath Prasad) and pointed out that even though** the petitioner's claim was rejected by the Supreme Court, the Railway authorities who were the employees of the petitioner in that case, were ordered not to vary to the detriment of the petitioner or reduce the pension

and other retiral benefits which the respondent was already drawing or had drawn. The Supreme Court also further directed that if any benefit is given to the said petitioner as a result of the High Court judgment, the same shall not be withdrawn.

6. In this petition the Order dated 26.12.2001 by which the ad hoc retrospective promotion was withdrawn by the Government has not been substantially challenged. The only relief which is sought in respect of the said Order is to restrain the respondents from implementing the same. We are not inclined to grant the blanket order sought by the petitioner because his pension was fixed at Rs.6750/- before he retired and the promotion given to him subsequently was reduced from Rs.7150/- to Rs.6750/- has been withdrawn by the Government. The petitioner cannot claim any right in respect of the enhanced pension.

7. The petition is therefore dismissed. However, it is clarified that the pension given to the petitioner for about five to six months (as informed by the learned Advocate General) from Rs.6750/- to Rs.7150/- shall not be recovered from the petitioner as

it is made ex gratia. The substantive pension of the petitioner will be Rs.6750/-. No order as to costs.

D. G. DESHPANDE, J.

P. V. HARDAS, J.

sl.